

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLEAR CHOICE FACILITY MAINTENANCE, LLC –)
ALLEGED VIOLATION OF UNDERGROUND) CASE NO. 2019-00279
FACILITY DAMAGE PREVENTION ACT)

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on September 27, 2019 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on September 27, 2019 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on September 27, 2019.

A copy of this Notice, the certification of the digital video record, and hearing log have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/0pYbCOxkTiw> .

Parties wishing an annotated digital video recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 4th day of October 2019.

A handwritten signature in cursive script that reads "Gwen R. Pinson".

Gwen R. Pinson
Executive Director
Public Service Commission of Kentucky

Sutton Law Service Company, LLC
Register Agent
Clear Choice Facility Maintenance, L
6900 Houston Road, Suite 43
Florence, KENTUCKY 41042

Clear Choice Facility Maintenance, LLC
9210 Marshall Road
Covington, KENTUCKY 41015

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CLEAR CHOICE FACILITY MAINTENANCE, LLC)	CASE NO.
ALLEGED VIOLATION OF UNDERGROUND)	2019-00279
FACILITY DAMAGE PREVENTION ACT)	

CERTIFICATION

I, Candace H. Sacre, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on September 27, 2019. Formal Hearing Log is included with the recording on September 27, 2019;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of September 27, 2019; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of September 27, 2019 and the time at which each occurred.

Signed this 1st day of October, 2019.



Candace H. Sacre
Administrative Specialist III



Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Session Report - Detail

27September2019

Damage Prevention Act Opening Hearing 2019-00160, 2019-00161, 2019-00165, 2019-00279, 2019- 00299

Date:	Type:	Location:	Department:
9/27/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Michael Schmitt
Clerk: Candace Sacre

Event Time	Log Event	
8:53:10 AM	Session Started	
8:53:13 AM	Session Paused	
8:59:07 AM	Session Resumed	
9:00:25 AM	Chairman Schmitt Note: Sacre, Candace	The first case, in numerical order, is 2019-00160, Jonathan Hylton. Is Mr. Hylton here?
9:00:38 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Hylton, I wanted to ask you, have you been served? Did you get a copy of the initiating order which started this proceeding?
9:00:47 AM	Chairman Schmitt Note: Sacre, Candace	You did not? Okay, that's, I guess, the demand letter that was made. How did you know there was a hearing this morning?
9:01:05 AM	Chairman Schmitt Note: Sacre, Candace	Okay, let me go through the docket, and then we can talk about how to proceed with you. At this point, apparently, a complaint has been filed, or an order, against you, but apparently you have not received it. We'll need to talk about how to deal with that, so if you will have a seat, we'll get to you right off the bat.
9:01:27 AM	Chairman Schmitt Note: Sacre, Candace	Number two, 2019-00161, Lonnie Williams and Son Excavating, LLC.
9:01:42 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Williams, do you have an attorney? Here's the issue, individuals can have an attorney or not have an attorney. It isn't required. But a business entity, such as a corporation or legal liability company, in order to advocate for a position, because the corporation or the LLC, it's separate from you, it's not the same, legally, it's a separate person, and there is a statute in Kentucky that says, under such circumstances, a person or a company can only be represented by somebody who has a license to practice law in Kentucky. (Click on link for further comments.)
9:04:03 AM	Chairman Schmitt Note: Sacre, Candace	Okay, we can do that. Mr. Park, I guess I would ask you if you have any problems with calling Mr. Williams as a witness. The only difference is, Mr. Williams, you wouldn't be able to ask questions of the inspector. You wouldn't be able to cross examine.
9:04:25 AM	Chairman Schmitt Note: Sacre, Candace	Okay, then we'll move ahead, and you can be a witness as opposed to being an advocate or a lawyer. Please have a seat, and we'll get to you second.
9:04:37 AM	Chairman Schmitt Note: Sacre, Candace	Third, 2019-00165, Michael Cullum. Yes, Mr. Cullum, are you here and ready to go?

9:04:47 AM	Chairman Schmitt Note: Sacre, Candace	All right, okay, thank you. You don't have to have a lawyer. You're not required to have one. You can tell your story and cross examine a witness or witnesses, if any are called to testify. Thank you.
9:05:02 AM	Chairman Schmitt Note: Sacre, Candace	Four is 2019-00279, Clear Choice Facility Maintenance, LLC. Is anyone here on behalf of Clear Choice?
9:05:15 AM	Chairman Schmitt Note: Sacre, Candace	We'll call them later as we get through the others. Maybe they're just late.
9:05:20 AM	Chairman Schmitt Note: Sacre, Candace	2019-00219, Basham Construction and Rental Company, Inc. Yes, sir?
9:05:29 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Basham, the same thing holds true for you as Williams Excavating, LLC. I assume you do not have a license to practice law, correct? And you do not have a lawyer who is with you here this morning. You'll have an option of either being a witness and telling what you know but not advocating for your company. (Click on link for further comments.)
9:07:34 AM	Chairman Schmitt Note: Sacre, Candace	You can speak with them, but now we're at the hearing, and there's nothing I can do about it. Go ahead.
9:07:54 AM	Chairman Schmitt Note: Sacre, Candace	This is an official administrative proceeding. Everything you say is being broadcast over the internet, and this is a video record that is being made in this case and in others. Ms. Sacre, here, is basically doing a log, sort of an outline, of what everybody says that will be available and can be synced in with the video. (Click on link for further comments.)
9:08:46 AM	Chairman Schmitt Note: Sacre, Candace	I don't know. This is the first alleged, or it's more than one?
9:08:54 AM	Chairman Schmitt Note: Sacre, Candace	I tell you what, if you need more time to think about it, this is the last case on the docket. You can either make a decision now or wait until your case is called or we'll have four others in between or three, depending on what Mr. Hylton wants to do, and you can say, I've made a decision, and this is what we'll do, and I'll give you whatever time you need.
9:09:25 AM	Chairman Schmitt Note: Sacre, Candace	Yeah, you are. In any event, we will then start with Mr. Williams in a minute, and you may walk out and make any decision, and at any time up to and including the time your case is called, which is last, maybe around noon, and you can make that decision.
9:09:51 AM	Chairman Schmitt Note: Sacre, Candace	You and I can talk about the limits that would be placed upon or what you could say and do if you went forward, if the company went forward, without an attorney.
9:10:06 AM	Chairman Schmitt Note: Sacre, Candace	No, no. I know that, and what our interests are here, too, is in protecting you and in seeing that the company gets a fair shake, but how you proceed is up to you. I can't make that decision.
9:10:25 AM	Chairman Schmitt Note: Sacre, Candace	Go right ahead. Take your time.

9:10:28 AM	Chairman Schmitt Note: Sacre, Candace	I guess then the next order of business would be to call the first case, and then I guess that would be Mr. Hylton, Jonathan Hylton, and then we can discuss how to proceed.
9:11:02 AM	Chairman Schmitt Note: Sacre, Candace	We will, at this time, declare a recess for one minute at which time we'll go on a different video, Mr. Hylton, and then we'll call your case, and we can discuss what to do.
9:11:16 AM	Session Paused	
9:11:23 AM	Session Ended	

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ALLEGED VIOLATION OF UNDERGROUND)	2019-00279
FACILITY DAMAGE PREVENTION ACT)	

CERTIFICATION

I, Candace H. Sacre, hereby certify that:

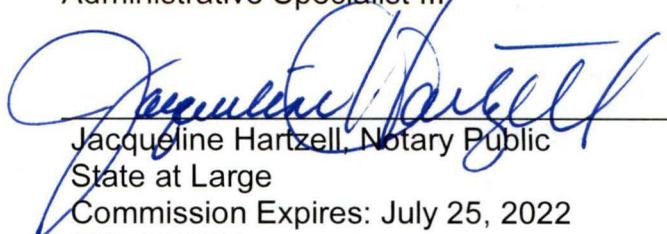
1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on September 27, 2019. Formal Hearing Log, Exhibit List, Exhibits, and Witness List are included with the recording on September 27, 2019;
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of September 27, 2019; and
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of September 27, 2019 and the time at which each occurred.

Signed this 1st day of October, 2019.





Candace H. Sacre
Administrative Specialist III


Jacqueline Hartzell, Notary Public
State at Large
Commission Expires: July 25, 2022
ID#: 605476



Clear Choice Facility Maintenance LLC (Clear Choice)

Date:	Type:	Location:	Department:
9/27/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Witness: John Gowins
 Judge: Michael Schmitt
 Clerk: Candace Sacre

Event Time	Log Event	
10:42:35 AM	Session Started	
10:42:38 AM	Session Paused	
10:43:33 AM	Session Resumed	
10:43:36 AM	Chairman Schmitt Note: Sacre, Candace	The Commission calls the next case, which is Case No. 2019-00279, Clear Choice Facility Maintenance, LLC. Is anyone present on behalf of Clear Choice Facility Maintenance, LLC?
10:43:54 AM	Chairman Schmitt Note: Sacre, Candace	This is the second time this case has been called, first being when we called docket this morning at 9 a.m., and no one was here for Clear Choice Facility Maintenance, LLC, at that time.
10:44:15 AM	Chairman Schmitt Note: Sacre, Candace	The record would indicate the initiating Order in the case, which was filed August 27, 2019, notified Clear Choice Facility Maintenance, LLC, that hearing would be held on September 27, 2019, at 9 a.m., Eastern Daylight Time, in Hearing Room 1 of Commission offices at 211 Sower Boulevard, Frankfort, Kentucky, for purpose of presenting evidence and going forward with case.
10:44:51 AM	Chairman Schmitt Note: Sacre, Candace	There is evidence in record that Clear Choice was served with initiating Order and process. Filed in record on September 10 is Executive Director's Notice of Filing, indicating Clear Choice had been served. It looks like someone named Kelly Kitts signed receipt for certified mail in which initiating Order was contained on August 29, 2019, so Clear Choice is before Commission but has failed to file responsive pleading to charge contained in Order and is not here.
10:45:55 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Park, are you ready to proceed with case in absentia against Clear Choice Facility Maintenance, LLC?
10:46:03 AM	Staff Atty Park PSC Note: Sacre, Candace	Yes, Your Honor.
10:46:05 AM	Chairman Schmitt Note: Sacre, Candace	Please identify yourself for the record and your witness.
10:46:08 AM	Staff Atty Park PSC Note: Sacre, Candace	John Park, Staff Attorney with Commission's Division of Inspections. With me is Tina Frederick, also a Staff Attorney with the Commission. Staff is ready to proceed.
10:46:24 AM	Chairman Schmitt Note: Sacre, Candace	Please call your first witness.
10:46:28 AM	Staff Atty Park PSC Note: Sacre, Candace	Commission Staff calls John Gowins.
10:46:42 AM	Chairman Schmitt Note: Sacre, Candace	Witness is sworn.

10:46:52 AM Chairman Schmitt
Note: Sacre, Candace Mr. Park, you may ask.

10:47:02 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Direct Examination. Please state name and place of employment.

10:47:13 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace What is your position at Division of Inspections?

10:47:26 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Are you familiar with excavation damage incident that occurred on December 30, 2018, at 2753 Brentwood Drive, Independence, Kentucky?

10:47:40 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Did incident involve damage to gas pipeline of Duke Energy?

10:47:48 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace When Division received report of damage, did Division investigate incident to determine if violation had occurred?

10:48:04 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Were you investigator assigned to investigate incident?

10:48:08 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Did you investigate incident?

10:48:12 AM Staff Atty Park PSC
Note: Sacre, Candace May I approach, Your Honor?

10:48:13 AM Chairman Schmitt
Note: Sacre, Candace Yes, you may.

10:48:47 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Would you describe document?

10:48:57 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace What did you do as part of investigation?

10:50:31 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Who provided the indentity of excavator?

10:50:37 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Did Duke provide Mr. Kitts' name as well as Clear Choice? How did you determine connection?

10:50:55 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace What is conection between Mr. Kitts and Clear Choice? How did you track down Clear Choice?

10:51:06 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace By Duke Energy?

10:51:23 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Was demand letter sent to Clear Choice?

10:51:27 AM Staff Atty Park PSC - witness Gowins
Note: Sacre, Candace Did Commission receive response?

10:51:32 AM PSC EXHIBIT 1.
Note: Sacre, Candace STAFF ATTY PARK PSC - WITNESS GOWINS.
Note: Sacre, Candace PIPELINE DAMAGE INVESTIGATIVE REPORT-CLEAR CHOICE.

10:51:33 AM Chairman Schmitt - witness Gowins
Note: Sacre, Candace Examination. The letter was returned?

10:51:40 AM Staff Atty Park PSC
Note: Sacre, Candace No further questions.

10:51:46 AM Chairman Schmitt - witness Gowins
Note: Sacre, Candace Examination. When you checked with Secretary of State, did you see name of Chad or Kelly Kitts? Were they involved with ownership of businss?

10:52:03 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	When you called number, when receptionist answered, did she answer as Clear Choice?
10:52:18 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	She indicated that Kelly Kitts worked there?
10:52:34 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	Based on what she said, Kelly was somebody in authority or more authority than she had?
10:52:45 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	When Inspections does investigation, is there attempt to determine not only name of company who did work but name of individual who was operating equipment at time of damage?
10:53:47 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	Does owner of property have any responsibility under dig law to call?
10:54:03 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	Operator of equipment has liability under dig law?
10:54:29 AM	Chairman Schmitt - witness Gowins Note: Sacre, Candace	Person running backhoe isn't supposed to dig unless they've seen locate ticket?
10:54:40 AM	Chairman Schmitt Note: Sacre, Candace	No further questions. Mr. Park, anything?
10:54:41 AM	Staff Atty Park PSC Note: Sacre, Candace	No further questions.
10:54:44 AM	Chairman Schmitt Note: Sacre, Candace	You may step down, Mr. Gowins. Any additional witnesses, Mr. Park?
10:54:49 AM	Staff Atty Park PSC Note: Sacre, Candace	I do not, Your Honor.
10:54:51 AM	Chairman Schmitt Note: Sacre, Candace	A decision will be made sometime next week. In the meantime, his case is hereby adjourned.
10:55:07 AM	Session Paused	
10:55:12 AM	Session Ended	



Exhibit List Report

2019-00279 27Sept 2019

Clear Choice Facility Maintenance
LLC (Clear Choice)

Name:	Description:
PSC EXHIBIT 1	PIPELINE DAMAGE INVESTIGATION REPORT

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) John E. Gowins	Incident ID 21080
Incident Date 9/30/2018 7:32:00 PM	Report Submitted 10/26/2018 1:39:57 PM

OPERATOR INFORMATION

Operator Duke Energy Kentucky, Inc. Phone (513) 287-2594 Incident Location 2753 Bentwood Dr, Independence 2753 Bentwood Dr Independence, KY 41051 Kenton	Reported By Laura Mate Email Laura.Mate@duke-energy.com Locate Ticket Number NONE
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EXCAVATOR INFORMATION

Name of Excavator Kitts, Chad Phone 859-816-6321 Excavator Address Clear Choice Facility Maintenance 3865 Turkeyfoot Rd Erlanger, KY 41018	Organization ID Email Locate Ticket Number
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INCIDENT

Builder was grading yard of home and damaged existing gas service. 811 not called.

INVESTIGATION

Clear Choice Facility Maintenance, LLC is a Kentucky company that is active and in good standing with the Secretary of State's office. Business address is listed as 9210 Marshall Rd, Covington, KY 41015.

Googled the company, the number on their website is (859) 342-7777.

May 3, 2019

- Called business number, left a voicemail.
- Called Mr. Chad Kitts number, left a voicemail

May 10, 2019 called business again, was told I need to speak with Kelly Kitts, and she was out. She will call me Monday.

May 14, 2019 called business again, was told Kelly was out today, but the person I spoke with said she was who took the call on the 10th and she would make sure Kelly got my message to call me.

May 23, 2019 called business again, got voicemail, explained that a demand letter with a \$1250 civil penalty was coming by tomorrow and if they had any additional information they would like to share with me they should call by today. No additional information received.

VIOLATION

KRS 367.4911 (1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

Sutton Law Service Company, LLC Register Agent
Clear Choice Facility Maintenance, L
6900 Houston Road, Suite 43
Florence, KENTUCKY 41042

Clear Choice Facility Maintenance, LLC
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